

**PROPOSED REGULATION OF THE  
STATE BOARD OF EDUCATION**

**LCB File No. R071-05**

August 8, 2005

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-3 and 5-13, NRS 385.080; §§4 and 24-29, NRS 385.080, 388.470 and 388.520; §§14-23, NRS 385.080 and 388.520.

A REGULATION relating to education; revising provisions relating to the education of pupils with disabilities; and providing other matters properly relating thereto.

**Section 1.** Chapter 388 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

**Sec. 2.** *“Homeless youth” has the meaning ascribed to it in 42 U.S.C. § 11434a(2).*

**Sec. 3. 1.** *A person employed by a public agency shall not require a pupil or a parent of a pupil to obtain a prescription for the pupil for a substance covered by the Controlled Substances Act, 21 U.S.C. §§ 801 et seq., as a condition of attending school, receiving an evaluation for special education or related services, or receiving special education or related services.*

*2. This section does not prohibit a teacher or other school personnel from consulting or sharing classroom-based observations with a parent of a pupil concerning:*

*(a) The academic achievement and functional performance of the pupil;*

*(b) The behavior of the pupil while in the classroom, on the premises of any public school, at an activity sponsored by a public school or on any school bus; or*

*(c) The need for the pupil to be evaluated for special education or related services.*

**Sec. 4. 1.** *If a pupil with a disability who is receiving special education services pursuant to an individualized educational program in a school in this State transfers to another school district in this State in the same academic year and enrolls in another school, the applicable public agency shall, in consultation with the parents of the pupil, provide the pupil with a free appropriate public education including services which are comparable to the services described in his previous individualized educational program. The public agency shall continue to provide such a free appropriate public education to the pupil until such time as the public agency adopts the previous individualized educational program for the pupil or develops, adopts and implements a new individualized educational program for the pupil in accordance with applicable federal and state law.*

*2. If a pupil with a disability who is receiving special education services pursuant to an individualized educational program in another state transfers to a school district in this State in the same academic year and enrolls in a school, the applicable public agency shall, in consultation with the parents of the pupil, provide the pupil with a free appropriate public education including services which are comparable to the services described in his previous individualized educational program. The public agency shall continue to provide such a free appropriate public education to the pupil until such time as the public agency conducts an evaluation of the pupil pursuant to NAC 388.330 to 388.440, inclusive, and develops a new*

*individualized educational program for the pupil, if determined appropriate, in accordance with applicable federal and state law.*

**Sec. 5.** NAC 388.001 is hereby amended to read as follows:

388.001 As used in NAC 388.001 to 388.655, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 388.005 to 388.141, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 6.** NAC 388.023 is hereby amended to read as follows:

388.023 “Assistive technology device” has the meaning ascribed to it in 34 C.F.R. § 300.5. *The term does not include a medical device that is surgically implanted or the replacement of such a device.*

**Sec. 7.** NAC 388.028 is hereby amended to read as follows:

388.028 “Autism” means a spectrum disorder which:

1. Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;
2. Is usually apparent before the age of 3 years; and
3. Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

↪ The term includes, without limitation, a group of developmental disorders such as autistic disorder, ~~Asperger's~~ *Asperger's* disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in subsections 1, 2 and 3.

**Sec. 8.** NAC 388.042 is hereby amended to read as follows:

388.042 “General *education* curriculum” means the goals and objectives defined by the public agency and the corresponding materials, equipment and instructional strategies to accomplish the educational functions of the public agency for all enrolled pupils.

**Sec. 9.** NAC 388.067 is hereby amended to read as follows:

388.067 “Orthopedic impairment” means a severe impairment which adversely affects the educational performance of a pupil and which results from:

1. A congenital anomaly, including, without limitation, clubfoot and absence of a member;
2. A disease, including, without limitation, bone tuberculosis and poliomyelitis; ~~and~~ *or*
3. Any other cause, including, without limitation, cerebral palsy, an amputation and a fracture or burn causing a contracture.

**Sec. 10.** NAC 388.071 is hereby amended to read as follows:

388.071 “Parent” means:

1. A natural, ~~or~~ adoptive *or foster* parent;
2. A guardian ~~other than this~~, *but not the State if the pupil is a ward of the* State;
3. A person acting in the place of a ~~parent~~ *natural or adoptive parent, including, without limitation, a grandparent, stepparent or other relative with whom the pupil resides or a person who is legally responsible for the pupil's welfare; and*
4. A surrogate parent appointed pursuant to NAC 388.283. ~~and~~

~~—5. A foster parent, if:~~

~~—(a) The natural parent’s authority to make educational decisions on the pupil’s behalf has been extinguished under state law; and~~

~~—(b) The foster parent:~~

~~——(1) Has an ongoing, long term parental relationship with the pupil;~~

~~——(2) Is willing to make the educational decisions required of parents pursuant to 20 U.S.C. §§ 1400 et seq.; and~~

~~——(3) Has no interest that would conflict with the interests of the pupil.]~~

**Sec. 11.** NAC 388.101 is hereby amended to read as follows:

388.101 “Related services” has the meaning ascribed to it in 34 C.F.R. § 300.24. *The term does not include a medical device that is surgically implanted or the replacement of such a device.*

**Sec. 12.** NAC 388.117 is hereby amended to read as follows:

388.117 “Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language ~~[which is characterized by a severe discrepancy between predicted and actual academic achievement,]~~ which is not primarily the result of a visual, hearing or motor impairment, mental retardation, serious emotional disturbance, or an environmental, cultural or economic disadvantage. The disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations. *The disorder includes, without limitation, such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.*

**Sec. 13.** NAC 388.133 is hereby amended to read as follows:

388.133 “Transition services” means a coordinated set of activities which:

1. Is designed within a process ~~[that is outcome-oriented]~~ *which is results-oriented* and which ~~[promotes]~~ *focuses on improving the academic and functional achievement of the pupil with a disability to facilitate the pupil’s* movement from school to postschool activities, including, without limitation, postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living ~~[and]~~ *or* community participation;

2. Is based on the needs of the pupil, taking into account the pupil’s preferences and interests; and

3. Includes, without limitation:

(a) Instruction;

(b) Related services;

(c) Community experiences;

(d) The development of employment and other objectives for living as an adult after the completion of school; and

(e) If appropriate, acquisition of daily living skills and functional vocational evaluation.

↪ The term includes special education, if provided as specially designed instruction or related services ~~[and]~~ and if required to assist a pupil with a disability to benefit from special education.

**Sec. 14.** NAC 388.255 is hereby amended to read as follows:

388.255 Except as otherwise provided in NAC 388.265, any change in the placement of a pupil with a disability must be based upon:

1. The current individualized educational program of the pupil;
2. ~~[An assessment of the pupil made within the preceding 3 years;]~~ *The most recent evaluation of the pupil;* and
3. Information relating to the current educational performance of the pupil.

**Sec. 15.** NAC 388.265 is hereby amended to read as follows:

388.265 1. No pupil with a disability may be suspended, expelled or excluded from attendance by a public agency if such suspension, expulsion or exclusion results in a change of placement of the pupil during any school year except upon compliance with the provisions of this section and 20 U.S.C. § 1415(k). *School personnel may consider any unique circumstances on a case-by-case basis when determining whether to make a change of placement for a pupil with a disability who violates a code of conduct for pupils.*

2. Before initiating any suspension, expulsion or exclusion that will result in a change of placement for the pupil, the public agency shall convene a meeting of *relevant members of* the committee *, as determined by the parent and the public agency,* that developed the pupil's individualized educational program pursuant to NAC 388.281. The public agency may appoint other qualified personnel to meet with *those relevant members of* the committee.

3. The *public agency, the parent, the relevant members of the* committee and any other qualified personnel appointed by the public agency to meet with the *relevant members of the* committee shall:

(a) Consider all information relevant to the behavior subject to disciplinary action, including, without limitation:

(1) Evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil;

(2) Observations of the pupil; and

(3) The pupil's individualized educational program and placement.

(b) Determine whether the behavior of the pupil was a manifestation of the pupil's disability.

~~[The committee and appointed personnel may determine that the behavior of the pupil is not a manifestation of the pupil's disability if the committee determines that:~~

~~——(1) In relationship to the behavior subject to disciplinary action, the pupil's individualized educational program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the pupil's individualized educational program and placement;~~

~~——(2) The pupil's disability did not impair the ability of the pupil to understand the effect and consequences of the behavior subject to disciplinary action; and~~

~~——(3) The pupil's disability did not impair the ability of the pupil to control the behavior subject to disciplinary action.]~~

*In carrying out the requirements of this paragraph, it must be determined whether the conduct in question was:*

*(1) Caused by or directly and substantially related to the pupil's disability; or*

*(2) The direct result of the public agency's failure to implement the pupil's individualized educational program.*

*↪ If the public agency, the parent and the relevant members of the committee determine that either subparagraph (1) or (2) is applicable to the pupil, the conduct must be determined to be a manifestation of the pupil's disability.*



(c) Prepare a report containing their findings and conclusions.

4. The public agency shall provide to a pupil with a disability who is suspended, expelled or excluded ~~in a manner that constitutes a change of placement of the pupil,~~ a free appropriate public education in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., on the 11th school day that a pupil is removed and during any subsequent school day in which the pupil is removed from school.

5. As used in this section:

(a) “Change of placement” has the meaning ascribed to it in 34 C.F.R. § 300.519.

(b) “School day” means any day, including a partial day, that pupils are in attendance at school for instructional purposes.

**Sec. 16.** NAC 388.281 is hereby amended to read as follows:

388.281 Except as otherwise provided in NAC 388.282:

1. Before providing special services and programs of instruction for pupils with disabilities, other than gifted and talented pupils, a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil. The procedure adopted must ensure that an individualized educational program is in effect at the beginning of each school year and before the initiation of special education or related services. For eligible pupils making the transition from programs operated pursuant to 20 U.S.C. §§ 1431 to 1445, inclusive, an individualized educational program must be developed and implemented by the pupil’s third birthday. ~~[An individualized family service plan may serve as the individualized educational program for pupils who are]~~ *If a pupil with a disability is* between 3 and 5 years of age ~~[if the agency complies with the provisions of 34 C.F.R. § 300.132. As used in this subsection, the term~~

~~“individualized family service plan” has the meaning ascribed to it in 34 C.F.R. § 303.340(b).],~~  
*the committee to develop an initial individualized educational program shall consider the  
pupil’s individualized family service plan.*

2. The individualized educational program for a pupil must be developed, reviewed and revised by a committee which includes at least:

(a) One representative of the public agency who is:

(1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of pupils with disabilities;

(2) Knowledgeable about the general *education* curriculum of the public agency; and

(3) Knowledgeable about the availability of resources of the public agency;

(b) If the pupil participates in a regular educational environment, one regular classroom teacher who teaches the pupil ~~§~~ or , if the pupil may participate in a regular educational environment, one regular classroom teacher;

(c) One special education teacher who teaches the pupil ~~§~~ or , if appropriate, one person who provides special educational services to the pupil;

(d) Except as otherwise provided in subsections ~~§6 and 7,~~ *10 and 11*, one or both of the pupil’s parents;

(e) If not otherwise a member of the committee, a person who is familiar with the tests and other assessments performed on or by the pupil and their results and who can interpret the instructional implications of the results of the evaluation;

(f) Except as otherwise provided in subsection ~~§8,~~ *12*, if the committee is meeting to develop an individualized educational program which includes needed transition services, or to

consider the pupil's transition services needs, the pupil and a representative of the participating agency; and

(g) At least one member of the committee must have personal knowledge about the personnel and options for placement available to provide special education and related services to the pupil.

3. The parents or their representative and the representative of the public agency may each ask such other persons who have knowledge or special expertise concerning the pupil, including the pupil and persons who provide related services to the pupil, as the parents or the representative of the public agency deem appropriate to join the committee.

4. *A member of a committee to develop an individualized educational program for a pupil with a disability must not be required to attend a meeting of the committee, in whole or in part, if:*

*(a) The public agency and the parent of the pupil agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting; and*

*(b) The parent of the pupil agrees in writing to the absence of the member.*

5. *A member of a committee to develop an individualized educational program for a pupil with a disability may be excused from attending a meeting of the committee, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:*

*(a) The parent of the pupil with a disability consents in writing to the absence of the member;*

*(b) The public agency consents to the absence; and*

*(c) Before the meeting, the member submits, in writing, to the parent and the committee the member's input concerning the development of the individualized educational program.*

6. The public agency shall:

(a) At least annually, initiate and conduct the meetings of the committees formed to develop the individualized educational programs;

(b) Maintain detailed records of each such program and the procedure followed in developing it;

(c) Ensure that each regular classroom teacher, special education teacher, persons who provide related services, and any other provider of services to the pupil who is responsible for carrying out the pupil's individualized educational program has access to the pupil's individualized educational program and is informed of any specific responsibilities related to carrying out the pupil's individualized educational program;

(d) Ensure that each regular classroom teacher, special education teacher, persons who provide related services and any other provider of services to the pupil who is responsible for carrying out the pupil's individualized educational program is informed of any specific accommodation, modification or support that must be provided to the pupil in accordance with the pupil's individualized educational program;

(e) Implement each program as soon as possible after it is developed;

(f) Take whatever action is necessary, including arranging for an interpreter for parents who are deaf or whose native language is other than English, to ensure that parents who attend a committee meeting understand the proceedings;

(g) Provide the services and instruction deemed necessary for the pupil by the committee; and

(h) Initiate and conduct additional meetings of the committees formed to develop the individualized educational programs to identify alternative methods of providing transition services or to revise the individualized educational program of a pupil with a disability when a participating agency fails to provide an agreed upon service.

~~[5.]~~ *7. After the annual meeting for a school year to develop the individualized educational program for a pupil:*

*(a) Upon agreement of the parent of the pupil with a disability and the public agency, the pupil's individualized educational program may be revised without convening a meeting of the committee.*

*(b) Portions of the pupil's individualized educational program may be revised without redrafting the entire individualized educational program.*

*↪ If an individualized educational program is revised in accordance with this subsection, the parent of the pupil with a disability must be provided with a copy of the revised individualized educational program.*

**8.** The public agency shall:

(a) Schedule the meeting for a time and at a place that is mutually agreed upon by the parents of the pupil and the public agency;

(b) Provide the parents of the pupil written notice of the purpose, date, time and location of the committee meeting and a list of the persons who will attend the meeting;

(c) Inform the parents of their right to invite persons who have knowledge or special expertise regarding the pupil, including, without limitation, related service personnel, to

participate as a member of the committee that will develop the pupil's individualized educational program; *and*

(d) ~~[Provide the parents with a statement of parental rights; and~~

~~—(e) If needed transition services for a pupil, transition services needs for a pupil or both needed transition services and]~~ *If* transition services ~~[needs of a pupil]~~ will be discussed at the meeting:

(1) Provide notice pursuant to paragraph (b) to the pupil and the parent and include in the notice to the pupil an invitation to the pupil to attend the meeting and include in the notice to the parent a statement that the pupil will be invited to attend the meeting; and

(2) Specifically state in the notice provided pursuant to paragraph (b) that ~~[needed transition services, transition services needs or both needed transition services and]~~ transition services ~~[needs, as applicable,]~~ will be discussed at the meeting.

↪ The notice must be given sufficiently far in advance of the meeting to enable the parents to make arrangements to attend.

~~[6.]~~ *9. The public agency shall, if the pupil previously received early intervention services pursuant to 20 U.S.C. §§ 1431 et seq., upon the request of the parent, send an invitation to the service coordinator of the pupil's early intervention or other representative of that system to participate in the initial meeting for the development of the pupil's individualized educational program to assist with the smooth transition of services for the pupil.*

*10.* If the parents do not acknowledge receipt of the notice given pursuant to subsection ~~[5.]~~ *8*, the public agency shall make additional attempts to notify them, which may include, without limitation, attempts to notify them by telephone or through a visit to their home or place of

employment. ~~[If, after consultation concerning the time and place of the meeting, the parents are unable to attend the committee meeting in person, the public agency shall use reasonable efforts to secure their participation in the meeting by written, telephonic or other means.]~~ The public agency shall keep detailed records of any telephone calls, correspondence or visits made to the parent's home or place of employment or had pursuant to this section and their results, if any.

~~[7.]~~ *The parents of a pupil with a disability and the public agency may agree to use alternative means of participation in a meeting by the use of a video conference, a telephone conference call or other means.*

**11.** If the reasonable efforts of the public agency to involve the pupil's parents are unsuccessful, the parents shall be deemed unavailable and the public agency shall develop an individualized educational program without the parents.

~~[8.]~~ **12.** If the individualized educational program includes ~~[needed]~~ transition services ~~[, transition services needs or both needed transition services and a statement of transition services needs,]~~ and a representative of the participating agency does not attend the meeting, the public agency shall consult with the participating agency regarding the planning of such services. If the pupil for whom the individualized educational program is being developed does not attend the meeting and the program includes ~~[needed]~~ transition services, ~~[transition services needs or both needed transition services and transition services needs,]~~ the public agency shall use alternative methods to ascertain the preferences and interest of the pupil and document the alternative methods that were used.

~~[9.]~~ **13.** The committee shall:

(a) Meet to develop the pupil's program no later than 30 days after it is determined that the pupil is eligible for special services and programs of instruction.

(b) Base the program it develops on the results of an evaluation made in accordance with NAC 388.330 to 388.440, inclusive.

(c) Review the program at least annually and revise it as necessary.

(d) Provide a copy of the program and any revisions to the parents.

**Sec. 17.** NAC 388.283 is hereby amended to read as follows:

388.283 1. ~~[A]~~ *Except as otherwise provided in subsection 2, a* public agency shall appoint or petition the Superintendent to appoint a surrogate parent for ~~[a]~~ :

*(a) A* pupil with a disability, other than a gifted and talented pupil, when the:

~~[(a)]~~ *(1)* Parents cannot be identified;

~~[(b)]~~ *(2)* Location of a parent is not discovered after reasonable efforts; or

~~[(c)]~~ *(3)* Pupil is a ward of the State.

*(b) An unaccompanied youth who is a homeless youth.*

*↪ The public agency or the Superintendent, as applicable, shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after the determination of the agency that the appointment is necessary. As used in this subsection, "unaccompanied youth" has the meaning ascribed to it in 42 U.S.C. § 11434a(6).*

2. *If a pupil with a disability is a ward of the State, the judge overseeing the care of the pupil may appoint a surrogate parent who satisfies the requirements of this section.*

3. A person selected as such a surrogate parent must have no interest that conflicts with the interests of the pupil and have knowledge and skills that ensure the adequate representation of



the pupil's interests. The surrogate parent must not be an employee of the public agency which is involved in the education or care of the pupil, but he may be paid by the public agency to serve as the surrogate parent.

~~{3-}~~ 4. The surrogate parent shall represent the pupil in all matters relating to the identification of a pupil, the assessment of any special educational needs of the pupil, the educational placement of the pupil and the provision of a free appropriate program of public education to the pupil. The program must be provided for the pupil without any cost to the parent.

**Sec. 18.** NAC 388.284 is hereby amended to read as follows:

388.284 1. Each committee shall include in the individualized educational program it develops:

(a) A statement of the pupil's present levels of ~~{educational}~~ *academic achievement and functional* performance, including, without limitation:

(1) If the pupil is preschool age, a description of how the disability of the pupil affects the participation of the pupil in appropriate activities.

(2) If the pupil is above preschool age, a description of how the disability of the pupil affects the involvement and progress of the pupil in the general *education* curriculum.

*(3) If the pupil takes alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives for the pupil.*

(b) A statement of the measurable annual goals, including benchmarks or the short-term instructional objectives, *academic and functional goals* related to meeting the needs of the pupil that result from the pupil's disability. Such goals must enable the pupil to ~~{participate}~~ *be*

*involved in* and *make* progress in the general *education* curriculum and meet the other educational needs of the pupil that result from the pupil's disability.

(c) A statement of the specific special education, supplementary aids and services, and related services , *based on peer-reviewed research to the extent practicable*, to be provided to the pupil, or on behalf of the pupil, and a statement of the modifications to the regular educational program or support for school personnel that must be provided for the pupil to:

- (1) Advance appropriately toward attaining the annual goals set forth in paragraph (b);
- (2) Participate and progress in the general *education* curriculum;
- (3) Participate in extracurricular activities and other nonacademic activities; and
- (4) Participate with other pupils with disabilities and pupils who are not disabled in the activities described in this paragraph.

(d) A statement of the assistive technology devices and services necessary for the pupil to be able to receive a free appropriate public education.

(e) If the pupil is 14 years of age or older, a statement of ~~the needs of the pupil for~~ transition services with regard to the pupil's courses of study, including, without limitation, participation in advanced placement courses or a vocational educational program. The committee may prepare such a statement before the pupil is 14 years of age if the committee determines that the statement is appropriate for the pupil. The statement required by this paragraph must be updated annually.

(f) ~~HH~~ *Beginning not later than the first individualized educational program which is in effect when* the pupil is 16 years of age ~~for older, a statement of the transition services needed by the pupil, including, if appropriate, a statement of interagency responsibilities or any other~~

~~linkages needed. The committee may prepare such a statement before the pupil is 16 years of age if the committee determines that the statement is appropriate for the pupil. The statement required by this paragraph must be updated annually .]~~ *and annual updates thereafter, each individualized educational program must include:*

*(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills; and*

*(2) Transition services, including, without limitation, the courses of study needed to assist the pupil in reaching those goals.*

(g) The projected dates for the initiation of the modifications and services described in paragraphs (c) to (f) , inclusive, and the anticipated frequency, location and duration of such modifications and services.

(h) A statement that describes the method by which the progress of the pupil toward the annual goals will be measured ~~[and the method by which the parents of the pupil will be regularly informed, by]~~ *and when* periodic reports ~~[of progress or otherwise, at least as often as a parent of a pupil who is not disabled is informed of the progress of his pupil. The report of progress must adequately inform the parent of:~~

~~——(1) The progress of the pupil; and~~

~~——(2) The extent to which the progress is sufficient to enable the pupil to achieve the goals set forth in paragraph (b) on or before the completion of the academic year.~~

~~——(i) A statement of the modifications that are necessary, if any, for the pupil to participate in examinations which are required by this State or the public agency. If the committee determines~~

~~that the pupil must not participate in a particular examination or a particular part of an examination, the committee shall include a statement describing the reason why the examination or the particular part of an examination is not appropriate for the pupil and the method by which the pupil will be otherwise tested.]~~ *on the progress of the pupil toward meeting the annual goals will be provided by the use of quarterly or other periodic reports, concurrent with the issuance of report cards, or other means.*

*(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the pupil on state and district-wide assessments. If the committee to develop an individualized educational program determines that the pupil must take an alternate assessment for a particular state or district-wide assessment of pupil achievement, the individualized educational program must include a statement of why the pupil cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the pupil.* The committee shall not base its determination of whether a pupil may participate in such examinations upon the fact that the pupil has already been labeled as having a disability, or upon the placement of the pupil or other categorical factors.

(j) If the pupil is entering the public agency from another public agency, provisions relating to case management and interagency transition services.

(k) A statement of the reasons for the placement of the pupil, including a statement of the other placements considered by the team and the reasons why the team rejected a less restrictive placement.

(l) An explanation of the extent, if any, to which the pupil will not participate in a regular class or in extracurricular or other nonacademic activities with pupils who are not disabled.

(m) On or before the date on which the pupil attains the age of 17 years, a statement that the pupil has been informed of the rights that will devolve upon the pupil when the pupil attains the age of 18 years. The statement must be updated annually.

2. When developing a pupil's individualized educational program, the committee shall:

(a) *Consider the strengths of the pupil, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the pupil, and the academic, developmental and functional needs of the pupil;*

(b) If the behavior of the pupil impedes the learning of the pupil or other pupils, consider ~~if appropriate, strategies to address such behavior, including, without limitation,~~ *the use of* positive behavioral supports and interventions ~~;~~ *—(b), and other strategies to address that behavior;*

(c) If the pupil has limited proficiency in English, consider the language needs of the pupil as those needs relate to the pupil's individualized educational program;

~~(e)~~ (d) If the pupil is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the committee determines, after an evaluation of the pupil's reading and writing skills, needs and appropriate reading and writing media, including, without limitation, an evaluation of the pupil's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the pupil;

~~(d)~~ (e) Consider the communication needs of the pupil, and in the case of a pupil who is deaf or hard-of-hearing, consider the pupil's language and communication needs, opportunities

for direct communications with other pupils and professional personnel in the pupil's language and communication mode, academic level and full range of needs, including, without limitation, opportunities for direct instruction in the pupil's language and communication mode; and

~~(e)~~ (f) Consider whether the pupil requires assistive technology devices and services.

3. When developing a pupil's individualized educational program, the public agency:

(a) May include goals and objectives of the general *education* curriculum in the individualized educational program of the pupil if the pupil's disability affects participation, involvement and progress in the general *education* curriculum and if the individualized educational committee determines that the inclusion of such goals and objectives is appropriate for that pupil;

(b) Shall not limit the availability of extended school year programs to pupils with a particular category of disability or unilaterally limit the type, amount or duration of those programs; and

(c) Shall include in the individualized educational program of a pupil who requires positive behavioral interventions, strategies and supports:

(1) Positive methods to modify the environment of pupils with disabilities to promote adaptive behavior and reduce the occurrence of inappropriate behavior;

(2) Methods to teach skills to pupils with disabilities so that the pupils can replace inappropriate behavior with adaptive behavior;

(3) Methods to enhance the independence and quality of life of pupils with disabilities;

(4) The use of the least restrictive methods to respond to and reinforce the behavior of pupils with disabilities; and

(5) A process of designing interventions based on the pupil that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the pupil without the use of aversive or negative means.

4. If both an individualized educational program and another individualized plan or program of services are required to be prepared for a pupil, the latter plan or program may be incorporated in the individualized educational program.

5. As used in this section, “extended school year programs” means special education and related services that:

- (a) Are provided to a pupil with a disability outside the normal school year of the public agency;
- (b) Are in accordance with the pupil’s individualized educational program;
- (c) Are provided at no cost to the parents of the pupil; and
- (d) Comply with the requirements of this chapter.

**Sec. 19.** NAC 388.300 is hereby amended to read as follows:

388.300 1. Except as otherwise provided in this section or NAC 388.440, informed written consent must be obtained from the parents of the pupil before conducting an initial evaluation ~~[or],~~ *before conducting additional assessments in a* reevaluation, and before special education and related services are initially provided to a pupil with a disability. If a parent does not provide written consent for the initial evaluation ~~[, reevaluation or the initial provision of special education,]~~ *or fails to respond to a request to provide the consent for an initial evaluation,* the public agency may request *mediation pursuant to NAC 388.305 or* a hearing pursuant to this section.

*2. If a pupil is a ward of the State and the pupil is not residing with the pupil's parent, the public agency shall make reasonable efforts to obtain the informed consent from the parent of the pupil for an initial evaluation to determine whether the pupil is a pupil with a disability. The public agency is not required to obtain informed consent from the parent of such a pupil for an initial evaluation to determine whether the pupil is a pupil with a disability if:*

*(a) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parents of the pupil;*

*(b) The rights of the parents of the pupil have been terminated in accordance with state law; or*

*(c) The rights of the parents to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by a person appointed by the judge to represent the pupil.*

*3. If the parent of a pupil refuses to consent to the initial receipt of special education and related services or the parent fails to respond to a request to provide such consent, the public agency shall not provide special education and related services to the pupil through use of mediation pursuant to NAC 388.305 or a hearing pursuant to this section. The public agency shall not be:*

*(a) Considered to be in violation of the requirement to make available a free appropriate public education to the pupil for the failure to provide such pupil with the special education and related services for which the public agency requests such consent.*



*(b) Required to convene a meeting relating to an individualized educational program or develop an individualized educational program for the pupil for the special education and related services for which the public agency requests such consent.*

**4.** Parental consent is not required:

- (a) Before existing data is reviewed as part of an initial evaluation or reevaluation;
- (b) Before a test or other assessment is administered to all pupils unless before administration of that test or assessment, consent is required of the parents of all pupils; or
- (c) If the public agency demonstrates that it has taken reasonable measures to obtain consent for an additional assessment to be conducted as part of a reevaluation and the pupil's parents have failed to respond.

~~[3.]~~ **5.** Except as otherwise provided in this subsection, a public agency shall notify the parents of a pupil with a disability, other than a gifted and talented pupil, within a reasonable time before any proposed or refused action regarding the:

- (a) Placement of the pupil;
- (b) Identification or evaluation of any special educational needs of the pupil; or
- (c) Provision of a free appropriate public education to the pupil. If a parent does not agree to the proposed or refused action of the public agency, the public agency or the parent may request mediation pursuant to NAC 388.305 or may request a hearing on the proposed action, or the parent may withhold the consent required by subsection 1, if that subsection applies.

~~[4.]~~ **6.** The notice of the public agency's action must be written in language understandable to the general public and in the native language of the parent unless that is clearly not feasible. If the native language or other method of communication that is used in the home is not written, the

public agency shall ensure that the notice is read to the parent in the native language or communicated to the parent by another method of communication and that the parent understands the notice. The public agency shall maintain written evidence of the parent's understanding of the translated notice.

~~[5-]~~ 7. The public agency shall include in the notice:

- (a) A description of the action proposed or refused by the public agency;
- (b) The reasons for the proposal or refusal;
- (c) A description of ~~[any]~~ *other* options the public agency considered and the reasons why those options were rejected;
- (d) A description of ~~[the assessment procedures, tests, records or reports]~~ *each evaluation procedure, assessment, record or report* upon which the action is based;
- (e) ~~[Any other]~~ *A description of the* factors which are relevant to the public agency's proposal or refusal;
- (f) A statement that the parents have rights in the matter, and if the notice is not notice of an initial referral for evaluation, the means by which a statement of parental rights can be obtained; and
- (g) Sources for parents to contact to obtain assistance in understanding the provisions of state and federal law relating to special education.

~~[6-]~~ 8. A public agency shall provide the parents of a pupil with a statement of parental rights ~~[1]~~ *once a year and:*

- (a) When the pupil is initially referred for evaluation ~~[1]~~ *or upon parental request for an evaluation;*

(b) ~~When notice of a meeting relating to the pupil's individualized educational program is provided to the parents;~~

~~—(c) When the pupil is being reevaluated; and~~

~~—(d)]~~ When the public agency receives ~~[a]~~ *the first* request for a hearing pursuant to this section from the parents ~~[.]~~; *and*

*(c) Upon request by the parents.*

↪ The statement of parental rights must explain fully the procedural safeguards listed in 20 U.S.C. § 1415(d)(2) that are available to the parents and the procedures for filing a complaint pursuant to NAC 388.318.

~~[7.]~~ **9.** If the parent desires a hearing regarding the public agency's proposal or refusal, the parent must submit a written request for the hearing to the head of the public agency.

*10. The party requesting a hearing, or an attorney representing the party, must provide notice to the other party and forward a copy of such notice to the Department.* The ~~[request]~~ *notice* must include:

(a) The name of the pupil;

(b) The address of the residence of the pupil ~~[.]~~ *or, if the pupil is a homeless youth, available contact information for the pupil;*

(c) The name of the school the pupil is attending;

(d) A description of the nature of the problem of the pupil relating to the public agency's proposal or refusal, including, without limitation, the facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the ~~[parents]~~ *party* at the time.

↪ A ~~public agency may not deny or delay a parent's right to a hearing pursuant to this section for failure to provide the request in the manner required pursuant to this section.~~

~~—8.]~~ *party may not have a hearing until the party, or an attorney representing the party, files a due process notice that meets the requirements of this subsection. Responses to a notice must be in accordance with 20 U.S.C. § 1415(c)(2)(B).*

**11.** Within 5 days after receipt of a request pursuant to subsection ~~[7.]~~ **9**, the head of the public agency shall request the Superintendent to appoint a hearing officer. The Superintendent, upon receiving such a request, shall:

(a) Appoint an impartial hearing officer from the list of hearing officers maintained by the Department; and

(b) Notify the parties of the appointment.

↪ The hearing officer appointed must not have a conflict of interest or be an employee of any public agency involved in the education or care of the pupil. For the purposes of this subsection, a person is not an employee of a public agency solely because the public agency compensates the person for the person's services as a hearing officer.

~~[9.]~~ **12.** Except as otherwise provided in this subsection, ~~[NAC 388.265]~~ **20 U.S.C. § 1415(k)** or as the parties otherwise agree, the pupil must remain in the pupil's current placement until completion of any administrative or judicial proceedings or a decision is rendered by the hearing officer or, if an appeal is taken pursuant to NAC 388.315, the review officer. If the hearing involves an application for the pupil's initial admission to a program of a public school, the pupil, with the consent of the parent, must be placed in a public school until the completion of all the proceedings. If, in an appeal taken pursuant to NAC 388.315, the review officer agrees

with the parents of the pupil that a particular change in the pupil's current placement is appropriate, the change in placement must be treated as an agreement between the public agency and the parents for the purposes of this subsection.

*13. A parent or public agency shall request a hearing within 2 years after the date on which the parent or agency knew or should have known about the alleged action that forms the basis of the hearing. The time limit for requesting a hearing does not apply to a parent if:*

*(a) The parent was prevented from requesting a hearing due to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the request for the hearing; or*

*(b) The public agency withheld information from the parent that the public agency was required to provide to the parent pursuant to 20 U.S.C. §§ 1400 et seq.*

**Sec. 20.** NAC 388.308 is hereby amended to read as follows:

388.308 1. A parent may request an expedited hearing if the hearing is to resolve a dispute concerning:

(a) A determination of whether the behavior of the pupil is a manifestation of the disability of the pupil which is made pursuant to paragraph (b) of subsection 3 of NAC 388.265; or

(b) A determination regarding the placement of a pupil pursuant to 20 U.S.C. § 1415(k) in an appropriate interim alternative educational setting.

2. A public agency may request an expedited hearing for ~~f~~:

~~—(a) A~~ ~~f~~ *a* determination regarding the placement of a pupil in an appropriate interim alternative educational setting pursuant to 20 U.S.C. § 1415(k), if the public agency determines

that the current placement of the pupil is substantially likely to result in injury to the pupil or others . ~~;~~ ~~or~~

~~—(b) An extension of the placement of a pupil in an interim alternative educational setting for:~~

~~—(1) The duration of administrative proceedings relating to a determination described in paragraph (a) or (b) of subsection 1; or~~

~~—(2) Forty-five days;~~

~~→ whichever is shorter.]~~

3. An expedited hearing must be conducted in accordance with the provisions of NAC 388.300 and 388.310, except that ~~[a request for an extension of time will not be granted.]~~ *the hearing must be conducted within 20 school days after the date on which the hearing is requested and must result in a determination within 10 school days after the hearing.*

**Sec. 21.** NAC 388.310 is hereby amended to read as follows:

388.310 1. If a parent, guardian or public agency requests a hearing pursuant to NAC 388.300, the public agency shall ~~;~~ *comply with the provisions of 20 U.S.C. § 1415(f) and:*

(a) Notify the parent, by certified mail, of the time and place set for the hearing;

(b) Inform the parent of any free or inexpensive legal services and other relevant services available in the area;

(c) Inform the parent of the right to request a resolution of the dispute through a mediation process pursuant to NAC 388.305; and

(d) Inform the parent of the provisions of this section.

2. At the hearing, a party to the hearing may:

(a) Be represented by counsel;

(b) Be accompanied by and advised by persons who have special knowledge of or training regarding the problems of pupils with disabilities;

(c) Present evidence;

(d) Call, examine and compel the attendance of witnesses; and

(e) Cross-examine witnesses.

3. At the hearing, the parent has the right to:

(a) Have the pupil present; and

(b) Have the hearing open to the general public.

4. The parent may examine all pertinent school records before the hearing.

5. A party to the hearing may object to the introduction of:

(a) Evidence; or

(b) Evaluations, including recommendations based upon evaluations,

↳ that have not been disclosed to the opposing party at least 5 business days before the hearing.

6. The public agency shall make a verbatim record of the hearing either in writing or, at the option of the parent, by electronic means. The record must be made available to any party to the hearing.

7. The public agency shall take whatever action is necessary to ensure that the parent understands the written notice and the proceedings at the hearing, including arranging for an interpreter for a parent who is deaf or whose native language is not English.

8. The public agency shall transmit the written findings of fact and decisions prepared pursuant to subsection 11 and transmit them to the Special Education Advisory Council of the

Department. The findings and decisions must be available for public inspection after removing any personally identifiable information of the pupil.

9. The hearing must be held at a time and place reasonably convenient to the parent and the pupil involved.

10. The hearing officer shall base the decision solely on the evidence presented at the hearing. *Subject to the limitations set forth in this subsection, a decision made by a hearing officer must be made on substantive grounds based on a determination of whether a pupil received a free appropriate public education. In a matter alleging a procedural violation, a hearing officer may find that a pupil did not receive a free appropriate public education only if the procedural inadequacies:*

*(a) Impeded the pupil's right to a free appropriate public education;*

*(b) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the pupil; or*

*(c) Caused a deprivation of educational benefits.*

*↪ This subsection does not preclude a hearing officer from ordering a public agency to comply with procedural requirements.*

11. Except as otherwise provided in this subsection, the hearing officer shall render the findings of fact and decision in writing and mail a copy of the decision to the parties within 45 days after the date on which the head of the public agency or the Superintendent if the hearing is requested by a public agency, receives the request for the hearing. Except as otherwise provided in NAC 388.308, the hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party. The written findings of fact and decision must



be made available to any party to the hearing. At the option of a parent, *the* findings of fact and decision must be made available to the parent by electronic means.

12. The public agency shall pay the expenses of the hearing officer and any other expenses of the hearing.

13. The hearing officer must not have a personal or professional interest which would conflict with the hearing officer's objectivity.

14. Each calendar year, the Department will provide a list to each public education agency of the hearing officers and their qualifications.

15. The decision of a hearing officer is final unless the decision is appealed pursuant to NAC 388.315. A public agency may proceed without the consent of the parents pursuant to the decision of the hearing officer.

16. As used in this section, "business day" means Monday through Friday, excluding federal and state holidays.

**Sec. 22.** NAC 388.315 is hereby amended to read as follows:

388.315 1. A party may appeal from the decision of a hearing officer made pursuant to NAC 388.310 within 30 days after receiving the decision. A party to the hearing may file a cross appeal within 10 days after he receives notice of the initial appeal. If there is an appeal, a state review officer appointed by the Superintendent from a list of officers maintained by the Department shall conduct an impartial review of the hearing. The officer conducting the review shall:

(a) Examine the entire record of the hearing;

(b) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(c) Seek any additional evidence necessary and, if a hearing is held to receive additional evidence, afford the parties the rights set forth in NAC 388.310;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing officer;

(e) Schedule any oral arguments at a time and place which is reasonably convenient to the parent and pupil involved;

(f) Make an independent decision on the completion of the review; and

(g) Except as otherwise provided in this paragraph, mail copies of the written findings and decision to the parties within 30 days after receipt of a written request for review. The review officer may extend the time for rendering a decision for a specific number of days upon the request of either party. At the option of the parent, the findings of fact and decision must be made available to the parent by electronic means.

2. The decision of a review officer is final unless a party brings an action pursuant to subsection 3.

3. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction within ~~30~~ 90 days after receipt of the decision of the review officer. A party may file a cross appeal within 10 days after he receives notice of the initial appeal.

4. The Department shall transmit the written findings of fact and decisions and transmit them to the Special Education Advisory Council of the Department after removing any

personally identifiable information of the pupil. The findings and decisions must be available for public inspection.

**Sec. 23.** NAC 388.318 is hereby amended to read as follows:

388.318 1. A person may file a complaint with the Superintendent stating that a public agency has violated a provision of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., or the regulations adopted pursuant thereto, or a provision of NAC 388.150 to 388.450, inclusive ~~[1]~~, *and sections 3 and 4 of this regulation*. The complaint must be in writing and must include the facts related to the alleged violation.

2. Within 60 days after receipt of the written complaint, the Department shall investigate the allegations in the complaint and render its decision. If the Department finds that the public agency has violated the federal or state requirements referenced in subsection 1, the Department shall order the public agency to take actions to remediate the violation.

3. A public agency that receives an order pursuant to subsection 2 shall take the actions prescribed in the order and provide to the Department documentation of all actions taken in accordance with the order.

**Sec. 24.** NAC 388.335 is hereby amended to read as follows:

388.335 Any test or other device for assessment used pursuant to NAC 388.330 to 388.440, inclusive, must comply with the *evaluation* procedures set forth in ~~[34 C.F.R. § 300.532.]~~ *20 U.S.C. § 1414(b) and NAC 388.340 and 388.420.*

**Sec. 25.** NAC 388.336 is hereby amended to read as follows:

388.336 As part of an initial evaluation if data is available, and as part of any reevaluation, a group that includes the committee that developed or will develop the pupil's individualized

educational program pursuant to NAC 388.281, the members of the eligibility team and any other qualified professionals appointed shall:

1. Conduct a review of data from existing evaluations, including, without limitation:

(a) Evaluations and information provided by the parents of the pupil;

(b) Current *local or state assessments and* classroom-based ~~assessments and~~ observations;  
and

(c) Observations by teachers and related service providers; and

2. Based upon the review and input from the pupil's parents, identify the additional data, if any, that is required to determine:

(a) Whether the pupil has a particular category of disability, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability ~~or~~ *and the educational needs of the pupil;*

(b) The present levels of ~~performance and educational~~ *academic achievement and related developmental* needs of the pupil;

(c) Whether the pupil needs special education and related services ~~or~~ , in the case of a reevaluation of a pupil, whether the pupil continues to need special education and related services; and

(d) Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized educational program of the pupil and to participate, as appropriate, in the general *education* curriculum.

↪ The group may conduct its review without a meeting.

**Sec. 26.** NAC 388.337 is hereby amended to read as follows:

388.337 1. Except as otherwise provided by ~~[subsection 2,]~~ *subsections 2 and 3*, when a public agency determines that good cause exists to evaluate a pupil pursuant to NAC 388.330 to 388.440, inclusive, it shall conduct the initial evaluation within:

(a) Forty-five school days after the parent, or pupil if the pupil is an adult, provides informed written consent;

(b) Forty-five school days after the date of the decision of a hearing officer pursuant to NAC 388.310 ordering the parent to allow, or adult pupil to submit to an evaluation; or

(c) At any other time agreed upon in writing by the parent or adult pupil and the public agency.

2. Upon the request of a public agency, the Superintendent may extend the deadline for conducting initial evaluations for not more than 15 school days.

3. *The deadline for conducting an initial evaluation does not apply to a public agency if:*

*(a) A pupil enrolls in a school served by the public agency after the 45 school day timeframe has begun and before a determination by the pupil's previous public agency as to whether the pupil is a pupil with a disability, but only if the succeeding public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and subsequent public agency agree to a specific time when the evaluation will be completed; or*

*(b) The parent of the pupil repeatedly fails or refuses to deliver the pupil for the evaluation.*

4. For the purposes of this section, “school day” means any day in which pupils enrolled in a school are scheduled to be engaged in registration, classes, other instructional activities or testing during the required minimum daily period for each grade or department.

**Sec. 27.** NAC 388.340 is hereby amended to read as follows:

388.340 1. *In conducting an evaluation pursuant to NAC 388.330 to 388.440, inclusive, the public agency shall use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information concerning the pupil, including, without limitation, information provided by the parent that may assist in determining:*

*(a) Whether the pupil is a pupil with a disability; and*

*(b) The content of the pupil’s individualized educational program, including, without limitation, information related to enabling the child to be involved in and progress in the general education curriculum or, for preschool children, to participate in appropriate activities.*

2. No single ~~[test or other device for]~~ *measure or* assessment may be used as the sole or controlling criterion for ~~[the placement of]~~ *determining whether* a pupil *is a pupil with a disability* pursuant to NAC 388.330 to 388.440, inclusive ~~[. The interpretation of data obtained from an assessment and any decision concerning the placement of a pupil must be:~~

~~—(a) Made in light of the physical condition, adaptive skills, and social or cultural background of the pupil; and~~

~~—(b) Based upon information from a variety of sources, such as the pupil, the pupil’s family, the pupil’s teacher or a test of aptitude or achievement.~~

~~—2.]~~ *, or for determining an appropriate individualized educational program for the pupil.*

*3. The public agency shall use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical or developmental factors.*

*4. The public agency shall ensure that:*

*(a) Assessments and other evaluation materials used to assess a pupil pursuant to this section are:*

*(1) Selected and administered so as not to be discriminatory on a racial or cultural basis;*

*(2) Provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally and functionally, unless it is not feasible to so provide or administer;*

*(3) Used for purposes for which the assessments or measures are valid and reliable;*

*(4) Administered by trained and knowledgeable personnel; and*

*(5) Administered in accordance with any instructions provided by the producer of such assessments;*

*(b) The pupil is assessed in all areas of suspected disability;*

*(c) Assessment tools and strategies that provide relevant information which directly assists persons in determining the educational needs of the pupil are provided; and*

*(d) Assessments of pupils with disabilities who transfer from one school district to another school district in the same academic year are coordinated with such pupil's prior and subsequent schools, as necessary, to ensure prompt completion of full evaluations.*

*5. In making a determination of the eligibility of the pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, a pupil may not be determined to*

be a pupil with a disability if the controlling factor for such a determination is the pupil's lack of *appropriate* instruction in reading , *including, without limitation, the essential components of reading instruction*, or math or limited proficiency in English.

~~[3.]~~ *As used in this subsection, “essential components of reading instruction” has the meaning ascribed to it in the Elementary and Secondary Education Act, 20 U.S.C. § 6368(3).*

6. The public agency must evaluate a pupil with a disability pursuant to NAC 388.330 to 388.440, inclusive, before determining that the pupil is no longer a pupil with a disability.

~~[4.]~~ *An evaluation is not required to terminate a pupil's eligibility if the pupil graduates from secondary school with a standard high school diploma or the pupil is no longer under the age of 22 years. The public agency shall provide such a pupil with a written summary of the pupil's academic achievement and functional performance, including, without limitation, recommendations to assist the pupil in meeting postsecondary goals.*

7. Any decision of the eligibility team concerning the eligibility of a pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, must be justified in a written report, to be kept in the records of the pupil maintained by the public agency. The public agency shall provide a copy of the report and any other documentation relating to the determination of the pupil's eligibility pursuant to this section to the parents of the pupil.

~~[5.]~~ 8. If the members of the eligibility team disagree about the determination of eligibility, a minority report must be prepared if required by paragraph (h) of subsection ~~[6.]~~ 7 of NAC 388.420 and may be prepared in any other case.

**Sec. 28.** NAC 388.420 is hereby amended to read as follows:



388.420 1. A pupil with specific learning disabilities is eligible for special services and programs of instruction if the eligibility team, comprised of the persons described in subsection ~~[4,]~~ 5, concludes that:

(a) Except as otherwise provided in subsection ~~[3,]~~ 4, the pupil exhibits a ~~[severe discrepancy between predicted and actual achievement in oral expression, comprehension in listening, mathematical calculation or reasoning, written expression, basic reading skills or comprehension in reading;]~~ *disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations;* and

(b) Prior intervention strategies have not remedied the ~~[discrepancy.]~~ *disorder.*

2. *When determining whether a pupil has a specific learning disability, the public agency may take into consideration whether a pupil has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematical calculation or mathematical reasoning.*

Except as otherwise provided in this subsection, *if the public agency considers* the existence of a discrepancy between predicted and actual achievement , *the discrepancy* must be determined through the use of a statistically valid formula, as prescribed by the Department, which takes into account the age and level of ability of the pupil, the correlation between tests of ability and achievement, and the reliability of each test used. The Department shall prescribe this formula on the basis of consultation with an appropriate representative of each public agency affected. In the case of a pupil under the age of 6 years, a discrepancy may be identified through the use of one or more tests of language concepts or academic readiness skills. ~~[The]~~ *If the public agency*

*considers the existence of a severe discrepancy between achievement and intellectual ability, the* discrepancy between predicted and actual achievement must be corroborated by classroom-based assessment.

3. *When determining whether a pupil has a specific learning disability, the public agency may use a process that determines if the pupil responds to scientific, research-based intervention as part of the evaluation procedures described in subsection 6.*

4. A pupil otherwise eligible for the special services and programs of instruction referred to in this section is not eligible if ~~[the discrepancy between]~~ the pupil's ~~[predicted and actual achievement]~~ *disorder* is primarily the result of:

- (a) A visual, hearing or motor impairment;
- (b) Mental retardation;
- (c) A serious emotional disturbance; or
- (d) An environmental, cultural or economic disadvantage.

~~[4.]~~ 5. The eligibility team must consist of:

- (a) The regular classroom teacher of the pupil or, if the pupil does not have a regular teacher, a teacher qualified to teach a pupil of the pupil's age;
- (b) A special education teacher or specialist with knowledge in the area of the suspected disability;
- (c) A school psychologist;
- (d) A parent of the pupil; and
- (e) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to the pupil's health, family, and social and emotional condition. This

person may be, without limitation, an administrator, nurse, school counselor, school psychologist or any other certificated or licensed professional.

~~15.1~~ 6. The conclusions of the eligibility team concerning the eligibility of the pupil must be based upon an evaluation of the pupil. The evaluation must include:

(a) An assessment of:

(1) The cognitive abilities of the pupil ~~16.1~~, *if the public agency considers the existence of a severe discrepancy between achievement and intellectual ability;*

(2) The social and emotional condition of the pupil;

(3) The academic achievement of the pupil;

(4) The performance of the pupil in the pupil's current educational setting;

(5) Any previous educational intervention on behalf of the pupil; and

(6) The health and developmental history of the pupil; and

(b) An observation of the academic performance of the pupil in the pupil's classroom or, in the case of a pupil under school age, in an environment appropriate for a child of the pupil's age. This observation must be conducted by someone other than the regular classroom teacher of the pupil.

~~16.1~~ 7. The eligibility team must prepare a written report of its conclusions. The report must include:

(a) A statement as to whether the pupil has a specific learning disability;

(b) The basis for making that determination;

(c) A description of the relevant behavior noted during the observation of the pupil;

(d) A statement of the relationship of that behavior to the academic functioning of the pupil;

- (e) Any educationally relevant medical findings;
- (f) A statement as to whether there is a ~~[severe discrepancy between the predicted and actual achievement of the pupil which cannot be corrected without]~~ *disorder which requires* special education and related services;
- (g) The conclusion of the team concerning the effect upon the pupil of any environmental, cultural or economic disadvantage; and
- (h) A certification by each member of the team that the report reflects the member's conclusions or, if the report does not reflect the conclusions of a member, a ~~[statement]~~ *minority report* of the conclusions of that member.

~~[7. —A reevaluation regarding]~~

8. *If the public agency considers* the continuing existence of a severe discrepancy between predicted and actual achievement *in a reevaluation of the pupil, the determination of a severe discrepancy* may be made based upon information other than the statistically valid formula prescribed by the Department pursuant to subsection 2.

**Sec. 29.** NAC 388.440 is hereby amended to read as follows:

388.440 1. ~~[Except as otherwise provided in this section, a pupil receiving special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, other than for the gifted and talented, must be reevaluated at least once every 3 years. A reevaluation must be conducted more frequently if conditions warrant or if a reevaluation is requested, based upon a reasonable belief that a change in the condition of the pupil has occurred, by the parent or teacher of the pupil or any other member of the committee that developed the pupil's individualized educational program pursuant to NAC 388.281.]~~ *A public agency shall ensure that a*

*reevaluation of each pupil with a disability is conducted if the public agency determines that the needs of the pupil for educational or related services, including, without limitation, improved academic achievement and functional performance, warrant a reevaluation or if the parent or teacher of the pupil requests a reevaluation. A reevaluation conducted pursuant to this section shall occur:*

*(a) Not more than once a year, unless the parent and the public agency otherwise agree; and*

*(b) At least once every 3 years, unless the parent and the public agency agree that a reevaluation is not necessary.*

2. If the members of the committee ~~[that]~~ *who* developed a pupil's individualized educational program pursuant to NAC 388.281 and other qualified personnel, including, without limitation, members of the eligibility team, determine in accordance with NAC 388.336 that no additional data is needed to determine whether the pupil continues to have a disability ~~[ ]~~ *and to determine the educational needs of the pupil*, the public agency shall notify the parents of the pupil of the public agency's decision not to conduct additional assessments and the reasons for the decision. The notice must include a statement informing the parents that they may request that an assessment be conducted.

3. In the case of a pupil with a disability who is placed in a program of early childhood education, the reevaluation required by subsection 1 must occur on an ongoing basis. At least every 6 months, the parents of such a pupil must be given the opportunity to participate in a review of the pupil's progress.

4. Each reevaluation of a pupil must be conducted in the manner prescribed by the committee that developed the individualized educational program for the pupil pursuant to NAC 388.281 and other qualified personnel in accordance with the needs of the pupil. Such a reevaluation also must comply with the requirements set forth in subsection ~~[2]~~ 4 of NAC 388.300 and **NAC** 388.330, 388.335 , **388.336** and 388.340.

5. Upon the completion of the reevaluation, the eligibility team shall issue a written report which includes a statement of any disability found to exist and the basis for any determination of continued eligibility.

~~[6.—A pupil must be reevaluated before a determination is made that the pupil no longer has a disability.]~~